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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/317,409	05/24/1999	SCOTT D. LUCAS	1590.3039	9060
8015	7590	01/12/2007		
CYTEC INDUSTRIES INC. 1937 WEST MAIN STREET P.O. BOX 60 STAMFORD, CT 06904-0060			EXAMINER BEFUMO, JENNA LEIGH	
			ART UNIT 1771	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/12/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/317,409

Applicant(s)

LUCAS ET AL.

Examiner

Jenna-Leigh Befumo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12,39-46,55,57-76 and 87-89 is/are pending in the application.
- 4a) Of the above claim(s) 1-12,39-46,60-76 and 87 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 55,57-59,88 and 89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on October 17, 2006, has been entered. Claims 13 – 38, 47 – 54, 56, and 77 – 86 have been cancelled. Claims 55, 88, and 89 have been amended. Therefore, the pending claims are 1 – 12, 39 – 46, 55, 57 – 76, and 87 – 89. Claims 1 – 12, 39 – 46, 60 – 76 and 87 are withdrawn from consideration as being drawn to a nonelected invention.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 55, 57 – 59, 88, and 89 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kain, Jr. (6,180,206) for the reasons of record.

Response to Arguments

3. Applicant's arguments filed October 17, 2006 have been fully considered but they are not persuasive. The applicant argues that Kain, Jr. fails to teach the claimed stiffness treated prepreg plies. However, Kain, Jr. discloses fabrics having two types of resin applied to the fabric. As described in claim 3, the composite includes fiber reinforced matrix resin layers. Kain, Jr., also describes these materials in specification as having an epoxy resin coating fiberglass fibers in a woven fabric (column 7, lines 43 – 50). Thus, the plies disclosed by Kain, Jr. have a first resin applied to the fibers. Additionally, the honeycomb structure includes a film adhesive between a first resin impregnated fabric layer and a second resin impregnated fabric layer. Thus, the layers adjacent the adhesive layer will having adhesive or resin applied to them to some degree.

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Therefore, the prior art teaches using fabric layers in contact with two different types of resins, one being the polymer material and the other being the resin material, which would correspond to the applicant's claimed stiffness treated prepreg ply and resin.

While this not applied to the treated fabric prior to layering of the honeycomb structure, this limitation is a method limitation which is not given weight with respect to the patentability of the product. If the prior art product has the same finished product as the claimed product, then the method of making the composite is not sufficient to distinguish the structure of the claimed product from the prior art. Particularly, the applicant does not recite that he resin is applied in any specific manner, such that the method of applying the resin can be any method step which results in the resin material being placed in contact with the prepreg layer. Including layer a layer of resin film onto a prepreg layer. The limitations with regards to resin and polymer material recited in the claims are broad categories that include the materials taught by Kain, Jr., Further, the method in which the polymeric material in polymerized is not given weight in the product claim and only requires that the polymer be at least partially polymerized. Thus, the prepreg plies used in honeycomb composite structure, which are partially cured prior to completely curing the entire composite read on this limitation. Further, the applicant has not provided sufficient evidence to show that the process would produce a different structure. The applicant has not provided evidence to show that the prior art does not have the claimed properties, as set forth in the previous Office Actions. Without a clear showing of a structural difference between the present invention and the prior art the claims are not sufficient to distinguish from the prior art.

Additionally, it is noted that Kain, Jr, discloses that by using the prepreg layers as taught adjacent the core layer, instead of using the "picture frame" tiedown ply, Kain, Jr. is able to eliminate core crush and produce lighter composites with less layers. These are also the same things which the applicant discusses are improved as a result of the claimed prepreg structure. Therefore, it is unclear how the method of making and applying the reasons taught by the applicant produces a structurally different final product when the prior art is using the same materials, resin coated prepreg fabric plies and honeycomb cores. The applicant has not clearly distinguished there structure from the prior art with specific structural limitation. Instead the applicant argues that the prior art doesn't have the improved stiffness features. However, the applicant has not provided any evidence demonstrating what the stiffness values or frictional values of the plies used in the prior art would be.

Further, it has been held that as long as there is evidence of record establishing inherency, failure of those skilled in the art to contemporaneously recognize an inherent property, function or ingredient of a prior art reference does not preclude a finding of anticipation. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1349, 51 USPQ2d 1943, 1948 (Fed. Cir. 1999). Further, it is noted that when the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Thus, the burden has shifted to the Applicant to provide evidence that the properties are not inherent in the prior art materials. *In re Best*, 562 F.2d at 1255, 195 USPQ at 433. Arguments of counsel cannot take the place of evidence. *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Until the applicant either clearly distinguishes the structural features of the claimed product or provides

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evidence showing the prior art does not have the required stiffness or frictional features the rejections are maintained.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlb
January 8, 2007


JENNA BEFUMO
PRIMARY EXAMINER